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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,485	03/18/2004	Daniel S. Albrecht	7354US01	5714

7590 11/25/2005

Ross Products Division
Abbott Laboratories
625 Cleveland Avenue
Columbus, OH 43215

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,485

Applicant(s)

ALBRECHT ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 7, 12-17, 25-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodor et al. (WO /2/41711 A1) in view of Zimmer (2003/0228392).

Bodor discloses a composition containing protein, fats and various amounts of carotenoids such as lutein, lycopene and beta-carotene (carotenes) and that the composition can be an emulsion in which it is desirable for the color to be white to pale yellowish (page 7, lines 1-8, lines 10-15, page 17, line 4 and 5, page 6, lines 29, 30). Claim 1 differs from the reference in the particular amounts of carotenes in particular ratios, in the use of particular amounts of oil, and in the use of carbohydrates. However, the reference discloses that a white to pale yellow color is required. Nothing is seen that the amounts of carotenes of the reference are not within the ranges of the claimed ratios as light colors are achieved. Certainly, the particular carotenes would have had to be used in particular amounts and ratios to achieve particular degrees of color. Nothing is seen as to any benefits in using the claimed carotenes in particular ratios, which would have been within the skill of the ordinary worker absent anything new in the use of particular ratios. It would have been within the skill of the ordinary worker to use particular parts of the total oil content of carotenes. Nothing is seen that that ratio is not

Art Unit: 1761

shown by the composition of the reference. In addition, it would have been within the skill of the ordinary worker to use particular amounts of the carotenes depending on the degree of fortification required. Zimmer disclose that infant formulas containing fats, carbohydrate and protein are known (page 2, para.0022). This reference also contains beta, carotene and lutein. The reference discloses that the carotenes of the reference can be used in milk type drinks (page 14, lines 15-20), which are known to contain carbohydrates. Therefore, it would have been obvious to use known carotenes in particular ratios as shown by the reference, and to use known infant formulas in the composition of Bodor.

The further ratios of claims 2-7 are seen to have been within the skill of the ordinary worker to vary according to the color and nutritional requirements of the product. Therefore, it would have been obvious to vary the amounts of carotenes in the product since their nutritional function is known and it is known to use particular amounts to achieve particular degrees of color.

Claim 12 further requires that the composition is in powdered form. The reference to Bodor et al. disclose that the composition can be in a powder form (col. 17, lines 30-31). The further limitations of claims 13-17 have been disclosed above and are obvious for those reasons.

The particular limitations of claims 25-27, 29-32 have been disclosed above and are obvious for those reasons.

Claim 28 further requires that the formula is in liquid form. Zimmer discloses that it is known to make infant formulas in dry and liquid form. Therefore, it would have been

Art Unit: 1761

obvious to make the composition of Bodor et al. in dry and liquid forms as taught by Zimmer.

Claims 33-36 further require giving the formula to people, and claim 34 and 35 that it is ready to feed, reconstituted formula, and claim 36 that it is administered to an infant. However, as to formula is a food product, it would have been obvious to give it to various groups of people that it was suited for. Reconstituted infant formulas are well known and nothing new is seen in giving an infant formula of a particular composition to an infant, as it is already known to given such containing vitamins to infants.

Claims 8-11, 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims, and further in view of Zimmer (2003/0228392 a1) and Biji et al. (6,727,373).

Claims 8-11, 18-24 further requires polyunsaturated fatty acids (PUFA) in particular amounts of the total formula solids Biji et al. disclose that it is known to use PUFA's in infant formulas (col. 6, lines 10-15, col. 23, lines 35-45, col. 28, lines 59-65). Zimmer discloses amounts of fat within the claimed amount and the claimed fatty acids (page 3, 0023). Therefore, it would have been obvious to use the Pufa's of Biji et al. and Zimmer in the composition of the combined references for their known functions.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 11-21-05


HELEN PRATT
PRIMARY EXAMINER